

**REMARKS**

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

**Rejection of Claims 3-4, 6-18, 20, 22 and 24-28 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 3-4, 6-18, 20, 22 and 24-28 under 35 U.S.C. §103(a) as being unpatentable over Joffe et al. (U.S. Patent No. 6,185,619) ("Joffe et al.") in view of Narendran et al. (U.S. Patent No. 6,070,191) ("Narendran et al."). Applicants respectfully traverse this rejection and submit that Applicants have established, by a preponderance of the evidence, that Joffe et al. should not be combined with Narendran et al. Applicants shall address the Examiner's response to our arguments and further present additional evidence why one of skill in the art would not have sufficient motivation or suggestion to combine these references.

We note that there are several issues with the Examiner's analysis. On page 2, the Examiner asserts that "applicants' arguments are deemed moot in view of the existing ground of rejection as explained here below." Applicants respectfully submit that this is an entirely inappropriate response to Applicants arguments against the combination of the references. The Examiner is tasked with objectively evaluating the evidence presented for and against the combination of references. If, under the preponderance of the evidence standard, a scale is envisioned, then the Examiner would place arguments on one tray of the scale and Applicants present arguments on the other tray of the scale. The arguments which carry the most weight determine whether one of skill in the art would have sufficient motivation or suggestion to combine the references. Accordingly, when the Examiner asserts that Applicants' arguments are "moot" in view of the existing grounds of rejection, Applicants respectfully submit that the Examiner has not fully considered our arguments or simply has ignored them rather than weighed them in the balance against the Examiner arguments. For example, MPEP 2144.08 II

Section B discusses how the Examiner determines whether rebuttal evidence is sufficient to overcome the *prima facie* case of obviousness. For example, on page 21-151 (Rev. 5, Aug. 2006), the MPHP requires the Examiner to consider rebuttal evidence and arguments and to weigh the proper evidence and arguments: "Office personnel should avoid giving evidence no weight, except in rare circumstances." Furthermore, in Section III, first paragraph, it states "Thus, once the Applicant has presented rebuttal evidence, Office personnel should reconsider any initial obviousness determination in view of the entire record. The Office Action should clearly communicate the Office's findings and conclusion, articulating how the conclusions are supported by the findings." In the second paragraph under this section, the MPEP states that "Explicit findings on motivation or suggestions is to select the claimed invention should also be articulated in order to support a 35 U.S.C. §103 ground of rejection." Applicants respectfully submit that wherein the Examiner's response to arguments merely deems Applicants' position as "moot", that the Examiner has inappropriately given no weight to our arguments. Accordingly, Applicants respectfully request full consideration of the weight of our arguments on the balance as is required under the preponderance of the evidence standard.

On page 3 of the Office Action, the Examiner addresses the thrust of Applicants' main argument that, by a preponderance of the evidence, one of skill in the art would not have sufficient motivation or suggestion to combine the references. This is primarily because of express teachings away from the combination of the references. The Examiner never addresses fully our argument and certainly does not provide any explicit findings regarding a response to why our arguments are insufficient by a preponderance of the evidence. The MPEP requires explicit findings should be articulated. In this case, on page 3, regarding point "B," the Examiner characterizes Applicants' arguments as "simply stating that there is no express teaching away from the combination of references" and that such statement is not supported by

evidence provided in the references. Applicants respectfully traverse this characterization and note that Applicants have provided a much more detailed analysis of the actual teachings and suggestive power of the references than has the Examiner. For example, in the Office Action dated November 20, 2006, the Examiner cited on page 4, column 14, lines 20-48 of Narendran et al. and column 5, lines 30-46 of Narendran et al. The Office Action also on page 4 cites Joffe et al. on column 4, lines 4-9 and column 3, lines 7-11 of Narendran et al. The Examiner's analysis regarding why it would have been obvious to one of skill in the art takes approximately  $\frac{1}{2}$  page to conclude. Applicants, in our February 20, 2007 filing provided approximately four full pages of analysis in which the detailed teachings of Joffe et al. and Narendran et al. were analyzed specifically for their suggestive power in the context of what they would teach to one of skill in the art and whether such a person of skill in the art would draw from those teachings any suggestion or motivation to combine the references. In sum, Applicants have argued that Joffe et al. teach a distributed computing system that requires replicated servers. Multiple columns and locations throughout the Joffe et al. reference have been cited and discussed in detail. Then, Applicants had turned to Narendran et al. and explained how their approach expressly criticizes, in column 2, lines 58 and 59, the limitations of the Joffe et al. replicated server approach because of the need for keeping caches consistent. Narendran et al. explain that the number of issues that are at play when a replicated server approach is used such as the limitations on load balancing and fault tolerance as an issue. Because of the express criticism against the approaches taught in the other reference, Applicants provided evidence on the scale in support of their position. Applicants respectfully submit that the Examiner cannot simply declare our arguments as "moot" in the context of balancing our arguments against the arguments of the Office. While the Examiner may conclude that Applicants' arguments do not outweigh the Office's arguments, Applicants respectfully request that our arguments be objectively viewed as is required by the

MPEP. Applicants understand that it is difficult to both be the “judge” of arguments on both sides while at the same time developing arguments against Applicants’ position, but Applicants would respectfully request that the Examiner strive to step away from both sets of arguments and evaluate objectively our position.

With this in mind, Applicants have again reviewed the references and have additional evidence to place on the scale in support of our position. We believe that this evidence may be even more potent than the previous evidence provided.

We first turn to Joffe et al. In their introduction and background, Joffe et al. discuss the replicated server approach. In column 3, lines 14-31, they discuss various Cisco products including the Cisco Distributed Director. This server redirects user requests to topologically distance servers based on information obtained from network routing protocols. Here, they explain that the distributed director intercepts either incoming DNS requests or HTTP requests and provides the appropriate response for redirection. They then criticize this HTTP redirection approach by stating:

“This product does not consider server load, and only considers the restricted set of information available from routing protocols; this information is also limited in accuracy by the aggregation techniques required to enable scalable internet routing.”

They then conclude their introduction section with further criticisms stating that the Cisco products, while considering server load and network characteristics, do not make an integrated server selection. In fact, they cite criticism from pundits in which they say “that the internet is still the world wide wait”. Joffe et al. they explain that what is needed in the art is a system that automatically selects an appropriate server from which to retrieve a data object for a user based upon the user’s request, and the capabilities and topology of the underlying network. The fundamental reason Applicants are explaining our citing of this portion of Joffe et al. is that they

take great care to criticize the HTTP redirection approach as having direct problems that their invention is designed to address.

Turning now to Narendran et al., we see that an HTTP redirection server 14-1 in Figures 1 and 2, are at the core of Narendran et al. Even in the summary of the invention, Narendran et al. state that the illustrative embodiment of their invention is “a scalable and fault-tolerant web server system that utilizes HTTP redirection”, Column 2, lines 60-61. Throughout Narendran et al. they teach that their approach is based on HTTP redirection. See, e.g., column 3, line 57 through column 4, line 55; column 5, lines 1-61; column 10, lines 41-44; column 14, lines 40-52. We note that in several of these places cited above, that Narendran et al. highlight the benefits of the HTTP redirection server as preferable because the HTTP protocol is supported by all browsers and web servers. In this regard, Applicants respectfully submit that because Narendran et al. require an HTTP redirection mechanism that would then be supported by all browsers and web servers that one of skill in the art would recognize to blend the teachings of Joffe et al. into Narendran et al. for vice-a-versa that Narendran et al. would have to abandon this fundamental teaching of using HTTP redirection. As noted above, column 3, of Joffe et al. expressly conclude their introduction with the failure of the HTTP redirection approach to adequately select an appropriate server. Applicants respectfully submit that this is an even more direct teaching within both Joffe et al. and Narendran et al. that would, on the balance, lead one of skill in the art away from blending these references rather than providing motivation to combine these references.

Applicants, of course, maintain that arguments provided in our previous responses in addition to the present arguments outweigh the Examiner’s arguments for the combination of Joffe et al. and Narendran et al. Applicants further note that in response to our arguments in the final Office Action on page 3, rather than substantively addressing or responding to our specific

arguments regarding the lack of sufficient motivation or suggestion to combine the references, the Examiner merely points to the rejection of claim 3 on pages 4-6. However, in this portion of the Office Action, the arguments are merely copied from the previous Office Action and provide no additional analysis or explanation as to why Applicants' arguments should be given no weight or even why they are insufficient. It appears simply they are given no weight with no explicit findings or additional evidence on the Office's side of the scale which could be used to outweigh the evidence Applicants have provided. Accordingly, Applicants respectfully submit that under the balancing of the preponderance evidence standard, Applicants have provided much more evidence regarding several instances of express teachings which would lead one of skill in the art away from the combination of the references. These are based on an objective analysis of the suggestive power of these references and not based on an unsupported "simple statement" that there are express teachings away from the combination. Applicants respectfully submit that because these references should not be combined that a Notice of Allowance is warranted at this stage.

Inasmuch as Applicants have explained how there has been no discussion or explicit findings in response to our substantive arguments that a clear issue has not been developed between Applicant and the Patent Office. Accordingly, rather than addressing our specific arguments, the Office has just deemed our arguments "moot", that under MPEP 706.07 that we have not in this case been entitled to a full and fair hearing and that a clear issue between Applicant and the Examiner has been developed. In other words, inasmuch as the Examiner's response has failed to provide any substantive analysis or any citation to any new sections of each of the references and that no clear issue has been developed between the Examiner and the Applicants. Accordingly, Applicants respectfully request either a Notice of Allowance or a non-final Office Action which addresses the multiple arguments presented as evidence by Applicants

regarding the suggestive power of each of these references and how they actually lead away from their combination.

**CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druee & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

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By: 

Correspondence Address:

Thomas A. Restaino  
Reg. No. 33,444  
AT&T Corp.  
Room 2A-207  
One AT&T Way  
Bedminster, NJ 07921

Thomas M. Isaacson

Attorney for Applicants  
Reg. No. 44,166  
Phone: 410-286-9405  
Fax No.: 410-510-1433